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## MANAGEMENT SPECIALISTS Company

A Division of Century 21 Realty Specialists Corporation

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May 3, 1996

Office of the Secretary  
Federal Communications Commissioner  
Washington, D.C. 20554

Re: Proposed Federal Communications Commission Rule Overriding Over-the-Air  
Broadcast Antenna Restrictions.

Dear Commissioners:

My name is Harold Burger. I am a Senior Account Executive of Management Specialists Company, a medium sized community association management company serving 37 condominiums, cooperatives and community associations with a total of 3,074 residential units. I have been involved in managing condominiums for over 15 years, nine (9) as a board member of a 148 unit townhouse complex, three (3) as treasurer and two (2) as president, and six (6) years as a professional. I am submitting these comments not only on behalf of Management Specialists Company but at the specific direction of four (4) associations; TROPIC GARDENS I, INC. (a 216 unit townhouse complex), ALII CLUSTER PARK, INC. (a 68 unit townhouse complex), KAUMUALII PARK (a 81 unit three story building) and KA HALE MO'I (a 104 unit high rise complex).

It is unfortunate that most people think that restrictions on modifications, including the installation of antennas, to the common element of community associations are based only on aesthetic considerations because there are many other serious considerations.

There are maintenance considerations. If improperly done, installation of rooftop antennas may cause leaks and may void the roofing warranty. Who is going to be responsible for any necessary repairs? Most association documents make the owner of the modification responsible but does the proposed regulation override this provision? Will the proposed regulation clearly define the responsibility of the owner of the antenna to the association, or will this have to be settled in court? If the roof, or other area that the antenna is mounted on, needs repainting or repairs not related to the antenna, who is responsible for the costs of removing and replacing the antenna while the work is being done? If an antenna falls off it's mount, hurting someone or damaging property, who is responsible? Since the association can draw upon the assets of all members, it will be the wealthiest defendant unless specifically protected by law. Who is going to be responsible for the maintenance of the antenna? Will the association be able to make owners properly maintain the antenna?

The physical location of antennas is another consideration. A multi-story building may not have sufficient roof area for separate antennas for each unit. Who decides which units get the best locations? Does the antenna owner have the right to remove plants or trees that might interfere with installation? Who decides which areas of the common element is used for antenna installations? Who controls cable runs? Who pays for installation of additional cable runs for the antenna cables?

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How are installations to be controlled so that there is no physical or electromagnetic interaction between antennas? If repeaters or amplifiers are needed, who pays for the electricity? Many Hawaii associations have document provisions preserving sight lines? How will violations of these restrictions be handled?

There are other more theoretical concerns. The association documents and bylaws are a contract between the association, as an entity, and the individual owners and between the individual owners. Does the Federal Communications Commission have the legal authority to declare portions of this contract null and void? Is this action a violation of the "Due Process" clause of the constitution? Can a owner who feels that the value of his property has been decreased by the installation of antennas have legal recourse? If so, from whom?

The association documents have provisions for making changes to the documents. In Hawaii, modifications to the common element require approval of 75% of the owners. Owners desiring to make modifications can request that the modifications be submitted to the ownership for approval. Boards of Directors can propose changes to the documents that would establish standards for the installation of antennas should owners request permission to install antennas. Boards can not prevent an owner from going to the rest of the association for approval of their request.

While I realize that the purpose of this proposed regulation is to increase the availability of video programming services, please reconsider the effect this will have on the ability of community associations to manage their affairs. I thank you for the opportunity to present you with this testimony and can only hope that you will reconsider the proposed regulation.

Sincerely,

MANAGEMENT SPECIALISTS COMPANY



Harold Burger  
Senior Account Executive

cc: The Board of Directors of the Following Projects:  
Aii Cluster Park, Inc.  
Ka Hale Mo'i  
Kaumualii Park, Inc.  
Trpoic Gardens I, Inc.